IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.
Writ Petition No. 5552 of 2007
[Sau. Meena M. Kamdi Vs. Tejram G. Hajare & ors.]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. M.R. Joharapurkar, Advocate for the petitioner.

CORAM : A.H. JOSHI, J.

DATE : 10th December,2007.

1. Heard.

2. The Plaintiff is challenging the Order passed below Exh.89, by which the defendants' prayer for a permission to lead secondary evidence has been granted.

3. The plaintiff is trying to find fault with the order, urging that the version of defendants pleaded in the application for leading additional evidence is contrary to what is recorded by the Tahsildar while sanctioning Mutation Entry No. 146, by which the defendants' names were recorded on the basis of the Will relating to the suit property. This evidence could very well be used by the plaintiff to counter the secondary evidence.

4. Moreover, the finding reached by the Trial Court believing the defendants' version that now it is beyond the control of the defendants to produce the original document is a finding of fact based on preponderance of probabilities which cannot be interferred in the Writ jurisdiction.

5. Learned Advocate for the petitioner cited at bar the following reported judgments to substantiate his point:-

[a] Dr. Gurmukh Ram Madan Vs. Bhagwan Das Madan [AIR 1998 SC 2776],

[b] Rambhau Sadashivappa Jatkar Vs. Tryambak Shenfal Satbharkre [2006 (3) Mh. L.J. 85], and

[c] Ramdas Bhatu Chaudhary Vs. Anant Chunilal Kate [2006 (6) Mh. L.J. 571].

The said precedents are considered to be of no avail at the stage of grant of permission to lead secondary evidence.

6. In the circumstances, no interference is called for. Writ Petition is accordingly dismissed.

Judge

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